IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

AS.No. 292 of 1996()

(OS.314/1991 of III ADDL.SUB COURT, KOZHIKODE).
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APPELLANT:

THE SECRETARY,
MUKKOM GRAMA PANCHAYATH,
MUKKOM,
KOZHIKODE DISTRICT.

BY ADV. SRI V.V.SURENDRAN,P.M.PADMANABHAN

RESPONDENTS:

KUTTIPPURATH KUNHAN,
S/O. CHANDU, AGED 50 YEARS,
RESIDING AT KIZHAKEL,
THAZHEKODE AMSOM DESOM,
MUKKOM, KOZHIKODE.

BY ADV. SRI.M.C.SEN,PARVATHI MENON.A.,
SRI.SHAHNA KARTHIKEYAN,S.PRAKASH

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 25/9/2007
THE COURT ON 10-10-2007, DELIVERED THE FOLLOWING;

P.R.RAMAN & V.K.MOHANAN, JJ.

A.S. No. 292 of 1996

Dated 10th October, 2007

JUDGMENT

Mohanan, J.

The plaintiff, in O.S.No.314/1991 on the file of the Subordinate Judge's court, Kozhikode is the appellant herein. According to the plaint averment, plaint schedule building belonging to the plaintiff was given on rent to the defendant on 20-10-84 fixing the monthly rent as Rs.1600/- for a period of three years and thus, the defendant was in possession of the said building. According to the plaintiff, since there was default in paying the rent and the same was kept in arrears, the plaintiff sent a registered notice on 19-2-87 for arrears of rent and since the defendant did not comply with the request, the plaintiff was forced to file R.C.P.No.38/87 before the Rent Control Court, Munsiff-II, Kozhikode. In the said proceedings, the Rent Control Court passed an order of eviction under section 12(3) of the Act. The respondent/defendant filed R.C.A.No.61/89, but the same was also dismissed. Since, the R.C.A filed by the defendant was dismissed, the plaintiff/appellant preferred an execution petition

as E.P.No.11/91 and as per the proceedings thereon, the defendant was evicted and the plaintiff got vacant possession of the plaint schedule building. During the pendency of the R.C.P., the defendant/respondent has paid an amount of Rs.32,800/- which he has been adjusted towards the arrears of rent. Therefore, according to the plaintiff, he is entitled to get a total sum of Rs.92,535/- with 5% interest from 30-3-91.

2. In the written statement, the defendant/respondent took the contention that the suit is not maintainable. The defendant is not liable to pay rental to the plaintiff and even if there is such arrears, the same is barred by limitation. According to the defendant, no details are given in the plaint regarding the payment and the interest calculated and therefore contended that the suit is liable to be dismissed.

3. During the course of the trial, Exts.A1 to A6 are produced and marked as exhibits on the side of the plaintiff and there was no documentary evidence from the side of the defendant. No witness was examined on either side.

4. The trial court has found that the plaintiff is entitled to realise a sum of Rs.48,800/- from the defendant. The suit was

decreed in favour of the plaintiff directing the defendant to pay a sum of Rs.48,800/- with 6% interest from the date of plaint till realisation. The plaintiff, however with out being satisfied by the above judgment and decree, has come up in appeal. According to the appellant, the court below erroneously adjusted the amount paid towards the period i.e., from 1-1-87. It is also argued that the court below was wrong in not granting interest over the rent accrued and in not granting cost to the plaintiff/appellant.

5. We have heard the counsel appearing for the appellant and the respondent.

6. In fact, the plaintiff claimed the rental arrears at the rate of Rs.1600/- from 20-10-84 up to 30-3-91. The suit was filed only on 28-5-91 and therefore reckoning the 3 years period, the plaintiff's claim can be legally entertained only for the period from 28-5-89. After an analysis and on an evaluation of the materials and evidence on record, the trial court has found that entrustment was as per Ext.A1 on 28-10-84 and the eviction was as per Ext.A6 on 27-3-91. Thus according to the trial court, the arrears was only for a period of 6 years and 5

months. Thus, the total amount due was Rs.1,23,200/-. Admittedly, the plaintiff has received an amount of Rs.32,800/-. Therefore, the claim for Rs.1,07,379/- cannot be correct. As rightly held by the court below, the defendant had admitted the arrears as per acknowledgment contained in Ext.A5 only from 1-1-87. On the basis of the above materials, the court below came into a definite conclusion that from 1-1-87 - the date of acknowledgment by the defendant as per Ext.A5, up to 27-3-91 - the date of eviction, the arrears will come only for a total period of 51 months and thus total arrears will come to the tune of Rs.81,600/- and if the admitted amount is deducted from the above figure, the balance rent amount will come only Rs.48,800/-.

7. We find that the above finding arrived on by the court below is purely on the basis of the available materials and there is no contra evidence or materials to shake the above finding. In this juncture, it is also relevant to note that there is no relevant materials or evidence other than the bare claim of the plaintiff for Rs.92,535/- with 5% interest. In such circumstances, we do not propose to interfere with the finding rightly arrived at

by the court below. Therefore, the judgment and decree of the court below is confirmed and the appeal stands dismissed.

P.R.RAMAN, JUDGE.

V.K.MOHANAN, JUDGE.

kvm/-

P.R.RAMAN&

V.K.MOHANAN,JJ.

A.S. No.292 OF 1996

Judgment

Dated 10-10-2007.